

ESTTA Tracking number: **ESTTA571076**

Filing date: **11/15/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212861
Party	Defendant Bacardi & Company Limited
Correspondence Address	JANICE HOUSEY SYMBUS LAW GROUP PO BOX 11085 MC LEAN, VA 22102-7985 jhousey@symbus.com
Submission	Answer and Counterclaim
Filer's Name	Janice Housey
Filer's e-mail	jhousey@symbus.com, trademarks@symbus.com
Signature	/janice housey/
Date	11/15/2013
Attachments	91212861 LIVE TRUE Answer and Counterclaim 11-15-13.pdf(52554 bytes)

Registration Subject to the filing

Registration No	4222657	Registration date	10/09/2012
Registrant	FAIRMONT HOLDINGS, INC. 3400 S.W. 26th Terrace, #A-1 Dania, FL 33312 FL		

Goods/Services Subject to the filing

Class 033. First Use: 2012/06/01 First Use In Commerce: 2012/06/01 All goods and services in the class are requested, namely: Wine
Class 034. First Use: 2011/03/15 First Use In Commerce: 2011/03/15 All goods and services in the class are requested, namely: Cigars, cigar boxes, cigar cutters and cigar tubes

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Fairmont Holdings, Inc.
Opposer,

v.

Bacardi & Company Limited
Applicant.

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Opposition No. 91212861

Mark: DEWAR'S LIVE TRUE

ANSWER AND COUNTERCLAIM

1. Applicant is without sufficient information to admit or deny and therefore, denies the same.
2. Applicant is without sufficient information to admit or deny and therefore, denies the same.
3. Applicant is without sufficient information to admit or deny and therefore, denies the same.
4. Applicant is without sufficient information to admit or deny and therefore, denies the same.
5. Applicant is without sufficient information to admit or deny and therefore, denies the same.
6. The Opposed Mark was filed in the U.S. on February 26, 2013. Applicant denies that any “intent” can be derived from an application not at issue in the present proceeding.

Applicant admits the remaining allegations in this paragraph.

7. Applicant admits.
8. A. Applicant denies.
B. Applicant denies.
C. Applicant denies.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses and reserves the right to allege additional affirmative defenses.

1. The Opposition fails to state a claim upon which relief can be granted.
2. The DEWAR'S portion of Applicant's Mark is famous and therefore, there is no likelihood of confusion between Opposer's alleged mark and the mark opposed herein.

COUNTERCLAIM FOR CANCELLATION OF U.S. TRADEMARK REGISTRATION NO. 4,222,657

1. Bacardi & Company Limited, a corporation of Liechtenstein, with a registered address at 5 Aeulestrasse, Vaduz 9490, Liechtenstein (hereinafter "Bacardi") asserts that it is and will continue to be damaged by registration of the mark LIVE TRUE under Reg. No. 4,222,657, and accordingly, for the reasons set forth herein, petitions to cancel registration of the same.
2. Fairmont Holdings, Inc., a Florida corporation, with a business address at 3400 S.W. 26th Terrace, #A-1, Dania, Florida 33312 (hereinafter "Fairmont") is the owner of U.S. Reg. No. 4,222,657 (hereinafter the '657 Registration).

3. Bacardi is the owner of USPTO Ser. No. 85/859,951 for the mark for DEWAR'S LIVE TRUE for "Alcoholic beverages except beers" in Class 33.
4. Bacardi is the owner of USPTO Ser. No. 79/135,543 for the mark LIVE TRUE for "Alcoholic beverages (except beers)" in Class 33 and the USPTO has issued a refusal to register this mark on the basis of the prior registration for the mark LIVE TRUE owned by Fairmont.
5. Fairmont applied to register the mark LIVE TRUE on March 18, 2011 and claimed use of the mark since June 1, 2012 for "wine" in Class 33 and since March 15, 2011 for "Cigars, cigar boxes, cigar cutters and cigar tubes" in Class 34. This application matured into the '657 Registration on October 09, 2012.
6. Upon information and belief, Fairmont had not used LIVE TRUE as a valid trademark on any of the goods listed in the '657 Registration at the time it applied to register the LIVE TRUE mark, and has not used LIVE TRUE as a valid trademark at any time.
7. Accordingly, the '657 Registration should be cancelled as void *ab initio* for Fairmont's non-use of LIVE TRUE as a valid trademark in connection with any of the goods listed in the '657 Registration.
8. Alternatively, Fairmont abandoned the use of LIVE TRUE as a valid trademark in connection with the goods listed in the '657 Registration.

9. Alternatively, upon information and belief, to the extent Fairmont ever made lawful trademark use of LIVE TRUE in connection with the goods listed in the '657 Registration, Fairmont has ceased using the mark in connection with those goods and there is no evidence of any intent to resume use of the mark in connection with those goods and services in U.S. commerce.

Respectfully submitted,

Bacardi & Company Limited



Janice W. Housey
Counsel for Applicant

Date: November 15, 2013

Janice W. Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
540.518.9037 fax

CERTIFICATE OF SERVICE

On this 15th day of November 2013, a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM is being sent via first class mail, postage prepaid and addressed as follows:

Kim Kolback
Law Offices of Kimberly Kolback
1395 Brickell Ave., Suite 800
Miami, FL 33131



Janice W. Housey